

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting oil and gas lease application WY-4987.

Affirmed as modified.

1. Oil and Gas Leases: Applications: Filing

Under 43 CFR 3102.2-1(a) (1981), a partnership filing a simultaneous oil and gas lease application was required to file, or have on file under a serial reference number, a certified copy of its articles of partnership.

2. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases: Applications: Filing

An agency agreement which was filed for reference pursuant to 43 CFR 3102.2-1(c) (1981), had to be limited in duration to less than 2 years.

3. Oil and Gas Leases: Generally -- Oil and Gas Leases: Applications: Filing

The provisions of 43 CFR 3102.2-1, 3102.2-4, and 3102.2-6 must be strictly construed and where an oil and gas lease applicant or his agent fails to comply therewith, the application must be rejected.

APPEARANCES: Michael J. Tennant, Esq., Upland, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Helga Knight and Edward R. Miller, also known as Westates Group No. 8, appeal from the April 30, 1982, decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting their lease application for parcel

WY-4987, which was drawn with first priority in the September 1981 simultaneous oil and gas drawing. BLM stated in the decision:

In adjudicating your application, reference to W-56800 was made as to where your qualifications were filed. In reviewing your qualification file, we find that when you originally submitted your qualifications, your articles of association or partnership agreement was a machine copy and not a certified copy as required by Regulation 43 CFR 3102.2-4(a)(1) (43 FR 35162, May 23, 1980). [1/] By our letter of July 31, 1981, copy attached, you were advised of this requirement and also, that we erroneously assigned you a serial reference number. To date, we have not received a certified copy of your partnership agreement and your qualifications remain unacceptable.

As your qualifications were not acceptable in accordance with Regulation 43 CFR 3102.2-4(a)(1), you were not in compliance with Regulation 43 CFR 3112.2-3 at the time you filed for this parcel. Therefore, your lease application for Parcel WY-4987 is hereby disqualified.

In the letter dated July 31, 1981, directed to "Westates Groups I, III, V-XIV" BLM had stated:

The Regulations require that we have a certified copy of the Partnership Agreements. The documentation submitted does not contain such agreements.

According to the agency agreements submitted in lieu of the partnership agreements, the entity takes on the appearance of a joint venture with the individuals jointly using the services of Westates Resources, Inc. as agent. We submit that the partnership itself should be a party to the agreement.

We are returning the filing agreements and as they are between the agent and "individual" principals. The agency agreements must be between the partnership and the agency and must be specifically limited to less than two years in duration.

^{1/} On Feb. 26, 1982, the Department published interim final regulations which revised 43 CFR Subpart 3102 effectively eliminating the requirement to file the agent qualifications found in 43 CFR 3102.2-6, as well as the association qualifications found in 43 CFR 3102.2-4. 47 FR 8544 (Feb. 26, 1982). In the absence of countervailing public policy reasons or intervening rights, this Board may apply an amended version of a regulation to a pending matter where it benefits the affected to do so. See James E. Strong, 45 IBLA 386 (1980); Wilfred Plomis, 34 IBLA 222, 228 (1978); Henry Offe, 64 I.D. 52, 55-56 (1957). In this case, however, it is not possible to do so because of the intervening rights of the second and third priority applicants. Arthur H. Kuether, 65 IBLA 184, 186 (1982).

In the statement of reasons for appeal counsel for Knight and Miller states at pages 2-3:

On 20 February 1981, Helga Knight and her brother-in-law, Edward R. Miller, executed various documents to enable them to enter lease applications in the United States Government, Bureau of Land Management's non-competitive oil and gas leasing program on a regular basis. The documents executed were as follows: Statement of Partnership Qualification WY3100-73 (July 1980), Statement of Partnership Interest WY3100-74 (March 1980), Power of Attorney and Agent Agreement for United States Government and State of Wyoming Drawings, Extended Filing Agreement and Special Purpose Partnership Agreement (copies of these five documents are attached hereto as Exhibit 3 and made a part hereof by reference thereto.)

On 7 March 1981, the original signature copies of the five Exhibit 3 documents were mailed to the Department of the Interior, Bureau of Land Management Office, Cheyenne, Wyoming, by Westates Resources, Inc., the appointed agent for Helga Knight and Edward R. Miller. The transmittal letter sending these original signature copies requested that a serial number be assigned for Helga Knight and Edward R. Miller, who were filing their lease application entry cards under the name Westates Group #8. (copy of the 7 March 1981, transmittal letter is attached hereto as Exhibit 4 and made a part hereof by reference thereto.)

Counsel contends that the qualifications documents provided by Knight and Miller are acceptable, are in accordance with the applicable Federal regulations, and qualify them for issuance of the lease on parcel WY-4987.

In this case the face of the application indicated the applicant as "Westates Group #8." On the back of the application in the box labeled "Applicant's signature" is the signature of Helga Knight, dated "8/20/81." 2/ Below this in the box labeled "Agent's Signature" is an indecipherable scrawl, dated September 9, 1981. 3/ The back of the application also reveals that Edward Miller owns or holds a 50 percent interest in the application. In addition, the reference number W 56800 appears on the application.

We will first address the ground assigned by BLM for rejecting the application, i.e., failure to file a certified copy of the association or partnership agreement as required by 43 CFR 3102.2-4(a)(1). By letter dated July 31, 1981, BLM informed various Westates groups, including Group No. 8, that serial reference numbers had been assigned erroneously and that certified copies of the partnership agreements should be filed. Counsel for the groups (counsel herein) by letter dated August 13, 1981, responded to BLM

2/ It is clear from other documentation in the record that this is the holographic signature of Helga Knight.

3/ This is apparently the signature of one Alan Young, the president of Westates Resources, Inc.

stating that he felt that the certification requirement had been satisfied by the documents previously filed. He stated further:

While I believe that the documents submitted meet the requirements you discussed in your 31 July 1981 letter, I have enclosed a draft certification for your consideration. If it is your decision that further execution is required to meet the certification requirements of your office, I will mail a copy of the enclosed certification to every individual partner for their execution. Since this is expected to take some thirty (30) days to complete it is requested that the serial number previously assigned be allowed for all thirteen partnerships for the September filing. The deadline for this filing is approximately thirty (30) days hence. It would be appreciated if you could provide a response to this request by 1 September 1981.

(Exhibit 8, attached to the Statement of Reasons).

By letter dated September 9, 1981, BLM informed counsel:

Qualifications of entities are covered in Regulation 43 CFR 3102. May we specifically direct your attention to 43 CFR 3102.2-4 and 43 CFR 3102.3-1 entitled, respectfully, "Associations including partnerships" and "Statements".

Although these entities [Westates Groups] may have complied with the laws of the State of California we do not feel that the information submitted complies with the Regulation under which we are governed.

As we stated in our letter of July 31, 1981, the Regulations require a certified copy of the Articles of Association or Partnership. It has been our practice, for instance to accept a notarized copy of the agreement. We do not feel that the Partnership Certification Statement [which counsel had attached to his August 13, 1982, letter] would accomplish this purpose. The document is here enclosed.

Any relationship between the partnership and Westates Resources, Inc. is a private matter. However, as you state, if an agency relationship exists; that relationship must comply with and documentation submitted pursuant to Regulation 43 CFR 3102.2-6 ("Agents").

In view of the unique character of these entities and your stated interest in them, may we suggest a review of the Regulations concerning multiple filings at 43 CFR 3112.6-1(c).

(Exhibit 9, attached to Statement of Reasons).

Thus, BLM notified counsel that a certified copy of the agreement was necessary and that the proposed partnership qualifications statement was

insufficient. BLM also alerted counsel to the regulations governing agents (43 CFR 3102.2-6) because of the relationship between the partnership and Westates Resources, Inc. ^{4/}

In this case Westates Group No. 8 filed an application and referenced a serial number, even after it had been notified that the number had been assigned erroneously and that the file was insufficient.

[1] Under 43 CFR 3102.2-4(a) an association, including a partnership, is required to file with its application, or have on file under a serial reference number assigned pursuant to 43 CFR 3102.2-1(c), the following:

- (1) A certified copy of its articles of association or partnership;
- (2) A statement that it is authorized to hold oil and gas leases; and
- (3) A complete list of all general partners or members together with a statement as to their citizenship and identifying those authorized to act on behalf of the association or partnership in matters relating to Federal oil and gas leasing.

In addition, 43 CFR 3102.2-4(b) requires that not later than 15 days after the filing of the application, the following be filed or be contained in the serial reference file:

- (b) A separate statement from each person owning or controlling more than 10 percent of the association, setting forth citizenship and compliance with the acreage limitations of §§ 3101.1-5 and 3101.2-4 of this title, shall be filed with the proper Bureau of Land Management office not later than 15 days after the filing of the offer, or application if leasing is in accordance with Subpart 3112 of this title.

The information filed by Westates Group No. 8, which erroneously was assigned a serial reference number, was insufficient to comply with 43 CFR 3102.2-4(a)(1). BLM notified Westates Group of the deficiency. The deficiency was not rectified prior to the September 1981 drawing. BLM properly rejected the application for that reason.

There are, in addition, numerous other grounds for rejecting the application in this case. Helga Knight and Edward R. Miller, also known as Westates Group No. 8, entered into a "Power of Attorney and Agent Agreement" with Westates Resources. In fact, the president of Westates Resources signed

^{4/} Counsel states on appeal that he did not receive this letter until Sept. 19, 1981, upon returning from a business trip, and that on Sept. 15, 1981, Westates Resources, Inc., had forwarded the applications to the Wyoming State Office (Statement of Reasons at 6 and Exhibit 9 attached thereto).

the application in this case in the box labeled agent's signature. Therefore, the regulations governing agents were applicable.

Compliance with the agent requirements may be accomplished in a number of ways -- by complying either with 43 CFR 3102.2-6(a), 43 CFR 3102.2-6(b), or 43 CFR 3102.2-1(c), by reference. Alvin B. Gendelman, 67 IBLA 333, 335 (1982).

[2] The regulation 43 CFR 3102.2-1(c) provides in pertinent part:

(c) Filing statements for reference. A statement of the qualifications of a[n] *
* * agent, if the duration of the authority to act is less than 2 years and is
specifically set out (§ 3102.2-6) * * * may be placed on file with a Bureau of Land
Management office described in § 1821.2-1 of this title. [Emphasis added.]

The application in this case referred to a serial reference number. On file was the "Power of Attorney and Agent Agreement" between Knight, Miller, and Westates Resources which provided "The Principal [Knight and Miller] agrees that this Power of Attorney and Agent Agreement shall remain in effect until revoked in writing by the Principal." As correctly pointed out by BLM in its July 31, 1981, letter, pursuant to 43 CFR 3102.2-1(c), the agency agreement specifically must be limited to less than 2 years in duration. The agreement was not limited in this case. Therefore, assuming it was proper to use a serial reference number in this case, there was no compliance with 43 CFR 3102.2-1(c).

[3] On appeal it is asserted that when the application of Westates Group No. 8 was filed in this case it was accompanied by "all qualification statements and agreements applicable to Westates Group #8" (Statement of Reasons at 6). There is no indication in the record, however, that Westates Group No. 8's application for parcel WY-4987 was accompanied by a personally signed statement of understanding or a personally signed copy of any written agreement or contract authorizing services related to Federal oil and gas leasing or leases to be performed on behalf of the applicant. Such a statement or copy of an agreement is required by 43 CFR 3102.2-6(a).

Nor is there any record of compliance with 43 CFR 3102.2-6(b). That regulation requires the filing of a uniform agreement and statement of understanding with the application. In addition, it requires that a list of the names and addresses of each applicant participating under the agreement be filed no later than 15 days from the filing of the applications. 5/

In the alternative counsel argues that since BLM did not consider that the documentation filed contained a partnership agreement, there was no need

5/ Counsel states that "Westates Resources, Inc., as agent for some fifteen entities filing application entry cards in the United States Government, Bureau of Land Management oil and gas lease drawing program, utilized the same basic set of agreements for all of the entities" (Statement of Reasons at 12).

to comply with partnership requirements, but that Knight and Miller satisfied the sole party in interest regulation, 43 CFR 3102.2-7, and the acreage limitations of 43 CFR 3101.1-5 and 3101.2-4.

The regulation, 43 CFR 3102.2-7(b) provides:

(b) A statement, signed by both the offeror or applicant and the other parties in interest, setting forth the nature of any oral understanding between them, and a copy of any written agreement shall be filed with the proper Bureau of Land Management office not later than 15 days after the filing of the offer, or application if leasing is in accordance with Subpart 3112 of this title. Such statement or agreement shall be accompanied by statements, signed by the other parties in interest, setting forth their citizenship and their compliance with the acreage limitations of §§ 3101.1-5 and 3101.2-4 of this title. [Emphasis added.]

The basis for this argument by counsel is the following statement:

When Helga Knight and Edward R. Miller filed their first application entry cards, original signature copies of the Exhibit 3 documents were filed simultaneously. These documents set forth the agreement between them and set forth their citizenship and compliance with the acreage limitations of 43 CFR 3101.1-5 and 3101.2-4. This completely fulfills the requirements of 43 CFR 3102.2-7 that is stipulated on the application entry card. It must be noted that 43 CFR 3102.2-7 does not require any special certification of any written agreement between the applicant and the other party in interest. [Emphasis added.]

(Statement of Reasons at 19-20). Counsel's reference to the first filing is the March 1981 simultaneous oil and gas lease drawing (Statement of Reasons at 3). The regulation, 43 CFR 3102.2-7, requires that the statement be filed not later than 15 days after the filing of the application. The application in question was filed in September 1981. There is no evidence that the necessary documentation to satisfy 43 CFR 3102.2-7 was filed with the application or within the 15 days set forth in the regulation. Although counsel alleges that copies of the original were filed with the application in question, such would not be qualifying. The regulations contemplate that the statement required by 43 CFR 3102.2-7(b) be an original statement holographically signed in ink. ^{6/}

In any event, even assuming compliance with 43 CFR 3102.2-4 or 43 CFR 3102.2-7, as pointed out above, since Knight and Miller were using an agent, there had to be compliance with the agent regulations. There was not.

^{6/} Regulation 43 CFR 3102.2-1(a) states: "All statements required by the regulations in this subpart shall be holographically (manually) signed in ink.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

Bruce R. Harris
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Anne Poindexter Lewis
Administrative Judge